

KARTSYN1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 SYNTEL STERLING BEST SHORES
4 MAURITIUS LIMITED, SYNTEL, INC.,

5 Plaintiffs,

6 v.

15 Civ. 211 (LGS)

7 THE TRIZETTO GROUP, INC., et al.,

8 Defendants.

Jury Trial

-----x

9 October 27, 2020
10 9:30 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

District Judge

13 APPEARANCES

14 KIRKLAND & ELLIS LLP

15 Attorneys for Defendants/Counterclaim Plaintiffs

16 BY: MICHAEL W. DE VRIES

17 PATRICIA A. CARSON

ADAM R. ALPER

RYAN KANE

18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

19 Attorneys for Plaintiffs/Counterclaim Defendants

20 BY: NICHOLAS GROOMBRIDGE

JAREN JANGHORBANI

21 CRYSTAL LOHMANN PARKER

J. STEVEN BAUGHMAN

KARTSYN1

(Jury present)

THE COURT: Good morning again, ladies and gentlemen.
Thank you for being prompt.

So today is the day we have all been waiting for.
You're about to begin your deliberations in the jury room. You
are to conduct your duty as jurors in an atmosphere of complete
fairness and impartiality without bias or favor towards any
party. You should not consider what the reaction of the
parties or the public may be to your verdict, or what will
happen as a result of your verdict, whether it will please
anyone or displease anyone, be popular or unpopular.

Any consideration outside of the case as it has been
presented to you in the courtroom you should not consider. You
should find the facts from what you consider to be believable
and by the law as I gave it to you, and your verdict will be
determined by the conclusion you reach no matter who it might
help or hurt. For the same reason, the personality and conduct
of any attorney should not be something that you consider. If
you have formed opinions about anything like that, please don't
consider them.

The first thing you need to do when you go in the jury
room is to elect one member of the jury as your foreperson.
That person will preside over the deliberations and speak for
you here in open court. The foreperson has no greater voice or
authority than any other juror. The foreperson will send out

KARTSYN1

1 notes, and when the jury has reached a verdict, he or she will
2 notify the court security officer that you have reached a
3 verdict.

4 So you will have available in the jury room additional
5 copies of all of the exhibits admitted into evidence. And I
6 should also tell you that there are a couple of computers that
7 have the source code for the Facets software on it. Those are
8 actually in evidence. I'm going to keep them out here, but if
9 you want to look at the source codes for the Facets software,
10 you can ask to see them and we can arrange to do that.

11 The exhibits are listed on an exhibit list. That
12 should be available to you along with the exhibits digitally so
13 that you will be able to access them and identify them. And
14 I'll leave it to you to figure out who on the jury is best able
15 to deal with the exhibits and access them.

16 Any communications or questions that you have for the
17 Court should be made to me in writing. So what that means is
18 you write it on a note and the foreperson will sign it and date
19 it and put the time on it, and give it to the court security
20 officer who will be with you. But one thing you should not do
21 is don't at any point write on your note how you stand in terms
22 of your views. So don't say well, right now our vote is five
23 to two. So don't tell me anything about your vote. The only
24 thing I want to know about your vote is when you have reached a
25 unanimous verdict, which is what we need today. I shouldn't

KARTSYN1

1 say today, it will be reached whenever you reach it.

2 The most important part of the case is the part that
3 you as jurors are now about to play as you deliberate on the
4 issues of fact. It is for you and you alone to decide the
5 facts. I know that you will try the issues that have been
6 presented to you according to the oath you took on the first
7 day as jurors. And in the oath you promised that you would
8 well and truly try the issues joined in this case and a true
9 verdict render. It is your duty as jurors to consult with each
10 other and talk to each other before you reach agreement, which
11 is why I told you from time to time to keep an open mind, not
12 to talk about the case. Now is your opportunity to consult
13 with each other and do that, and that is part of the
14 deliberative process.

15 Each of you must decide the case for yourself, but you
16 should do so only after you speak with your fellow jurors.
17 Moreover, you should not hesitate to change your opinion if you
18 become convinced that it is incorrect. Every juror should be
19 heard. No one juror should monopolize the jury room. No one
20 juror should control or monopolize the deliberations.

21 As I said, your verdict must be unanimous, but you are
22 not allowed to surrender your honest convictions concerning the
23 effect or weight of the evidence for the mere purpose of
24 returning a verdict or solely because of the opinion of other
25 jurors. Discuss and weigh your respective opinions

KARTSYN1

1 dispassionately, without regard to sympathy, prejudice or
2 favor, and adopt the conclusion that you in your good
3 conscience believe to be in the performance of truth.

4 Again, each of you must make your own decision about
5 the proper outcome of the case based on your consideration of
6 the evidence and your discussions with your fellow jurors. No
7 juror should surrender his or her conscientious belief solely
8 for the purpose of returning a verdict.

9 So in the papers, we're going to look at them right
10 now, on jury chair is your verdict form. And I'm going to go
11 through the verdict form with you in just a moment. The form
12 is to help us, meaning the Court, the attorneys and the
13 parties, understand your findings.

14 You should not draw any inference from the way the
15 questions were worded. Don't look at them yet, we'll go
16 through every single question together.

17 No inference should be drawn from the way the
18 questions are worded as to what the answers should be. You
19 should not try to read into them any indication of any opinion
20 that I may have, because I don't have any. And you should
21 answer every question in order unless you're told to skip the
22 question. And I promise you it makes no sense if you don't go
23 in order and follow directions.

24 After you reached a verdict, the foreperson should
25 sign it and then each of you will sign it and then you should

KARTSYN1

1 notify the court marshal or security officer that you have
2 reached a verdict. And you can put that in the note and say
3 you reached a verdict and then I will come with the attorneys
4 and take your verdict.

5 I will stress that each of you must be in agreement
6 with the verdict that's announced in court, and once it's
7 announced by the foreperson I will actually ask each of you:
8 Is that your verdict? Once the verdict is announced and
9 officially recorded, it cannot be revoked.

10 So let's just look at the verdict form. The cover
11 page is what it is. And as I told you when I gave you the
12 directions, the directions are organized in the same way the
13 questions are. The questions have the basically three parts.
14 the First part is the parties' claims, the second part is with
15 regard to damages and the third part are the defenses.

16 And so if you look on page 2, you'll see that the
17 questions on page 2 have to do with TriZetto's claims. And
18 remember that they have three claims. The first one is
19 misappropriation of trade secrets under federal law, the second
20 one is misappropriation of trade secrets under New York law,
21 and the third is copyright infringement. And so you'll answer
22 each of those in order, and you'll see after each question
23 there's a direction of where to go next or what to do next.

24 If you look on page 3, those are the questions about
25 Syntel's claims. And I won't read them all, but you can see

KARTSYN1

1 that each question basically asks whether Syntel has proved
2 that particular claim, and you answer it yes or no, and there's
3 a little direction at the end of each one that says what to do
4 next.

5 Then if you go to page 4, that's damages. And the
6 damages questions have a direction at the beginning of them.
7 So the first one says: Answer only if you answered yes to
8 Question 1. And you'll remember, you'll go back and look, and
9 Question 1 is the federal trade secret claim that TriZetto
10 asserted. So it says if you answered yes to that, what's the
11 dollar amount of damages? Then it goes through and basically
12 follows each of the questions about the claim. If you answered
13 yes to the claim, then insert the dollar amount of damages.

14 So the damages for TriZetto's claims, those questions
15 are on page 4. Damages, if any. And again, remember because I
16 asked you for damages doesn't mean I think there are damages,
17 it's only if you think there are damages you should fill it in.

18 But the questions on page 5 relate to compensatory
19 damages for Syntel's claims. So again, if you answered yes to
20 the question about liability on the claim then it asks for the
21 the amount of damages. Then on the bottom of page 5 you see a
22 question about punitive damages, and the questions about
23 punitive damages follow on to page 6.

24 And then you begin the last section, which is the
25 section relating to defenses. as to each defense that has been

KARTSYN1

1 asserted you'll be asked to answer yes or no or yes for some
2 whether the party in question has proved that particular
3 defense.

4 And then once you have reached the end of the verdict
5 form, you'll see on the last page a place for your signatures,
6 a place the foreperson to sign, the date, and you're at the end
7 of your work. So that is what it is.

8 The one thing I should have said is, as I said, you'll
9 have all the exhibits with you in the jury room and you'll have
10 the ability, if you want, to ask to have testimony read back to
11 you if you believe that you need to do that, if you, for
12 whatever reason, want to hear testimony, because, as you know,
13 we had a court reporter take taking down every word. The one
14 thing you should bear in mind, though, is if you ask for
15 testimony, first we have to find it, and then the lawyers
16 either have to agree on what the appropriate parts are to show
17 you; if they disagree, then I have to rule on the disagreement,
18 and then we have to prepare it, bring you in here, and then
19 we'll present it to you. So that process can take some time.
20 If you ask for any testimony, don't just stop and say okay, now
21 we wait and hear the testimony, because it may be some time
22 before we're able to do that, and you should just keep going.
23 So those are my directions. As I said, you need to decide
24 unanimously what your verdict is.

25 And one final comment, and it's not because I think

KARTSYN1

1 it's necessary to say but because it's the custom in our
2 courthouse, and that is that, regardless of your views, you
3 should treat each other with courtesy and respect during your
4 deliberations. All litigants stand equal in this room and all
5 litigants stand equal before the rule of justice. Your duty is
6 to decide between and among the parties fairly and impartially
7 and to see that justice is done, all in accordance with your
8 oath.

9 So thank you. Now it's time to go in and deliberate,
10 and you may go.

11 Actually, we should swear the court security officer.

12 Well, we won't swear the court security officer, you
13 can go begin your deliberations.

14 Let me say one other thing. You'll return one copy of
15 the verdict form to me, so if you make mistakes or you want to
16 play around on another one or other copies of it, we have
17 plenty of copies. Thank you.

18 (Jury retired to deliberate. Time noted 9:49 a.m.)

19 (Jury not present)

20 THE COURT: So ladies and gentlemen, if you just make
21 sure that Mr. Street has a cell phone number for one person on
22 each team, and stay close enough so that we can get you if the
23 jury has a question or we need you. You don't have to stay in
24 the courtroom if you don't want to.

25 MR. DE VRIES: Yes, your Honor, we have.

KARTSYN1

1 THE COURT: Okay, thank you.

2 (Recess taken)

3 THE COURT: Counsel, our court reporter is on the
4 phone, so state your name before you speak.

5 I have convened the parties in the Syntel case, which
6 is the trial that's been ongoing, because I have some the jury
7 notes.

8 So I have received various questions, and I didn't
9 bring you up for the first two because I didn't need to, but
10 let me just mark them for the record and tell you what they
11 are. The first one is Court Exhibit 7, which was dated today,
12 and the time was 10:35 a.m. And they said: We would like to
13 review the exhibits labeled P, but we can only see the D
14 exhibits. Could you let us know how to access? Thank you.
15 And it was signed by Susan Jones, who is the jury foreperson.

16 And the reason I didn't call you is because we could
17 resolve that issue because the exhibits were still downloading,
18 and so the issue was resolved and I didn't need to make you all
19 come back.

20 The second note I'm not even going to mark as a Court
21 exhibit because it's not signed by the foreperson, it's in
22 different handwriting and it says "Pepsi" and nothing else. So
23 I'm not going to mark that one.

24 And the next one I will mark as Exhibit 8, and it is
25 at 11:13 a.m. And it says: Could you direct us to the

KARTSYN1

1 document prepared by Thomas Britven regarding damages? We
2 cannot find it in the log.

3 We'll talk about this when I finish reading it. And
4 the second says: Also, may we review the closing statement
5 presentations? Thank you. Again, signed by Ms. Jones.

6 So as to the first document, are you able to tell me
7 the document prepared by Mr. Britven regarding damages? To me
8 there were a lot, but you tell me.

9 MR. DE VRIES: The answer is I believe I would want to
10 consult with Ms. Carson. My belief is that as part of his
11 presentation she put in certain spreadsheets or documents that
12 contain his damages numbers, but Ms. Carson will need to
13 correct me if I'm wrong about that.

14 MS. CARSON: Your Honor, there may be numbers in the
15 spreadsheets. I'm just not sure how easily they're going to be
16 to understand because they're pretty extensive spreadsheets. I
17 would have to go back and look at the exhibits.

18 THE COURT: So here's what I suggest you do, we'll
19 take a break in just a minute so the court reporter can come
20 up. Maybe you could identify a document or documents that are
21 responsive. I fear what they're referring to are demonstrative
22 aids.

23 MR. DE VRIES: I think that's probably what they're
24 asking for.

25 THE COURT: It's not my practice to send

KARTSYN1

1 demonstratives into the jury room, but at their request I will
2 usually allow them to see demonstrative aids they ask to see in
3 the courtroom. So what I would like you to do is pull what you
4 think are the relevant exhibits as well as the relevant
5 demonstrative aids so you can show them to counsel for Syntel
6 and we can go from there.

7 MR. DE VRIES: Your Honor, we may need to consult
8 about that. I know we have had this come up before. And so
9 why don't we do that. And then one thing that we ended up
10 doing last time was essentially writing a question back that
11 said what information are you looking at, because I know that
12 that in terms of sending demonstrative aids or providing that,
13 I know there's some rules around that which is what I wanted to
14 consult on. But one thing that we might be able to do is to
15 ask if there's a piece of information that they're looking for
16 that I don't think implicates those, but in the meantime we'll
17 look for those documents.

18 THE COURT: So I'm just curious, in terms of asking
19 for a piece -- asking if there's any information, how is that
20 handled in terms of giving them the information? I mean I
21 suppose we certainly could read from the transcript, but that's
22 not a very efficient way or user friendly way of doing it.

23 MR. DE VRIES: The last time that we did this earlier
24 this year, I will just recount this in case it's helpful, we
25 had a request from the jury, it seemed clear that it was

KARTSYN1

1 looking for the demonstrative slides, and I think there was a
2 conclusion from the parties that that wasn't going to be a good
3 way to go about it. So we wrote back and said we need like a
4 more specificity, and then they came back and they said we're
5 looking for the dollar amount of X., and then we were able to
6 reach agreement with the other party to just respond. Now
7 that, to be clear, took several rounds to get there, and I
8 don't mean to guess at what they might be looking for, but that
9 is what we did in that case.

10 THE COURT: Okay. And so they have also asked for the
11 closing statement presentations. I suspect, again, they're
12 looking for demonstratives, and I would not hand wholesale the
13 demonstration demonstratives over to them.

14 So here's what I suggest, I think we should take a
15 break and Ms. Carson can find the specific document or
16 documents that are requested, perhaps the two trial teams can
17 talk to each other and see if you can figure out how you want
18 to deal with this. My suspicion is that they're just going
19 through everything in order. This is not a one-sided request,
20 and so it's going to affect everyone eventually. So if we
21 could figure out a way to deal with it, I think that would be
22 good.

23 So let's take a break now and we'll let Mr. McDaniel
24 come up here and you'll let Mr. Street know when you are done
25 talking to each other and you want me back. Thank you.

KARTSYN1

MR. DE VRIES: Thank you, your Honor.

(Recess taken)

THE COURT: Mr. Street brought me your joint proposal. So he just typed it up and I'm going to send it back to the jury room and sign it.

But in your view, does that cover both the request for Mr. Britven's document as well as the more general request for the summation slide?

MR. DE VRIES: For TriZetto we certainly do, and I don't want to speak for Syntel, but I believe they do as well.

MR. GROOMBRIDGE: Yes, your Honor.

THE COURT: So I will sign it. It says we cannot provide the demonstrative slide decks we believe you have requested. Please let us know what information you are specifically looking for.

MR. DE VRIES: Yes, your Honor.

THE COURT: I'll be back when we hear from them.

(Recess taken)

THE COURT: I have a response from the jury, which I will mark as Court Exhibit 10. I will tell you in substance what it says first. In substance, it says never mind.

So it says: We wanted to see the demonstrative slides to find out the exact damage figure presented by Mr. Britven. In reading your directions, we have seen we do not need mathematical precision. We no longer need the document. Thank

KARTSYN1

1 you. Signed by the foreperson.

2 As long as I have you, this is either the first or one
3 of the first civil jury trials to be conducted by this Court
4 during the pandemic, and people have spent a lot of time trying
5 to figure out how we can function and still have trials
6 continue. And the committee that has been working on that has
7 requested any granular feedback which you can give about what
8 you think is working well, what could be improved on and how,
9 whether protocols that seem to be in place were actually
10 enforced, whether things seemed to slip through the cracks,
11 anything of relevance to the modifications to usual procedures
12 relating to the pandemic.

13 And you can give it to me in any way you want. You
14 can do it anonymously, you can scribble it on a piece of paper,
15 you can email the chambers email, I don't care, but we very
16 much appreciate your thoughts. And I have seen comments from
17 the first criminal trial, for example, and they were as
18 specific as we couldn't see through the glare of the screen to
19 see juror whatever. So be as specific as you like, thank you.

20 MR. DE VRIES: Yes, your Honor, we'll do that.

21 (Recess taken)

22 THE COURT: So I have a jury note which I am marking
23 as Court Exhibit 11. 12:48 p.m. We reached a verdict.

24 (Jury present)

25 (Time noted 1:00 p.m.)

KARTSYN1

1 THE COURT: Ladies and gentlemen, I understand you've
2 reached a verdict, and I also understand Ms. Jones is your
3 foreperson. Is it correct, that you reached a verdict?

4 THE FOREPERSON: Yes.

5 THE COURT: Could you hand the signed verdict form to
6 Mr. Street, please.

7 So I will read it into the record.

8 1. Has TriZetto proved that it possessed one or more
9 trade secrets that was or were misappropriated by Syntel in
10 violation of federal law (Defend Trade Secrets Act) for the
11 period May 11, 2016 to October 18, 2020?

12 Answer: Yes.

13 2. Has TriZetto proved that it possessed one or more
14 trade secrets that was or were misappropriated by Syntel in
15 violation of New York law for the period January 1, 2012 to
16 October 18, 2020?

17 Answer: Yes.

18 3. Has TriZetto proved that Syntel infringed one or
19 more of TriZetto's copyrights?

20 Answer: Yes.

21 4. Has Syntel Mauritius proved that TriZetto breached
22 the Master Services Agreement?

23 Answer: No.

24 5. Has Syntel Mauritius proved that TriZetto or
25 Cognizant misappropriated Syntel Mauritius's confidential

KARTSYN1

1 information?

2 Answer: No.

3 They seem to be missing an answer for number 6.

4 THE FOREPERSON: Your Honor --

5 THE COURT: You're right, it says answer only if you
6 answered yes to question 4, and it does not, so no answer to
7 number 6. Thank you.

8 7. Did TriZetto or Cognizant intentionally interfere
9 with Syntel, Inc.'s contractual relationship with the provided
10 named employees?

11 Answer: No.

12 On the damages case, compensatory damages for
13 TriZetto's claims.

14 8. What is the dollar amount of compensatory damages,
15 if any, TriZetto is entitled to receive from Syntel for the
16 misappropriation of trade secrets under federal law, which
17 permits recovery of avoided costs?

18 Answer: \$284,855,192.

19 9. What is the dollar amount of compensatory damages,
20 if any, TriZetto is entitled to receive from Syntel for the
21 misappropriation of trade secrets under New York law, which
22 does not permit recovery of avoided costs?

23 Answer: \$142,427,596.

24 10. What is the dollar amount of compensatory
25 damages, if any, TriZetto is entitled to receive from Syntel

KARTSYN1

1 for copyright infringement?

2 Answer: \$59,100,000.

3 11. Being mindful of not awarding damages that result
4 in double or multiple recovery for the same injury, what is the
5 total amount of compensatory damages, if any, TriZetto is
6 entitled to receive from Syntel in light of your answers to the
7 previous three questions?

8 Answer: \$284,855,192.

9 So questions 12, 13 and 14 are not answered.

10 Question 15, the answer is: Zero.

11 And now on to punitive damages, number 16. Do you
12 find that TriZetto is entitled to receive punitive damages?

13 Answer: Yes.

14 17. What is the dollar amount of punitive damages
15 TriZetto is entitled to receive from Syntel?

16 \$569,710,384.

17 18 is not answered.

18 19 is not answered.

19 Affirmative defenses. Number 20. Latches. For any
20 trade secrets that you find Syntel misappropriated, has Syntel
21 proved its affirmative defense of latches?

22 Answer: No.

23 21. For any copyrights that you find Syntel
24 infringed, has Syntel proved its affirmative defense of
25 latches?

KARTSYN1

1 Answer: No.

2 22. For any trade secrets that you find Syntel
3 misappropriated under federal law, has Syntel proved its
4 affirmative defense of waiver by a preponderance of the
5 evidence?

6 Answer: No.

7 23. For any trade secrets that you find Syntel
8 misappropriated under state law, has Syntel proved its
9 affirmative of defense of waiver by clear proof?

10 Answer: No.

11 24. For any copyrights that you find Syntel
12 infringed, has Syntel proved its affirmative defense of waiver?

13 Answer: No.

14 25. For any trade secrets that you find Syntel
15 misappropriated under federal law, has Syntel proved its
16 affirmative defense of estoppel?

17 Answer: No.

18 26. For any trade secrets that you find Syntel
19 misappropriated under state law, has Syntel proved its
20 affirmative defense of estoppel by clear and convincing
21 evidence?

22 Answer: No.

23 27. For any copyrights that you find Syntel
24 infringed, has Syntel proved its affirmative defense of
25 estoppel?

KARTSYN1

Answer: No.

28. Has Syntel proved the defense of unclean hands?

Answer: No.

29. Has TriZetto/Cognizant proved the defense of unclean hands?

Answer: Yes.

And that is the end of the verdict form. And now I will poll the jury. And first, let me start in the front row, Ms. Smith, is that your verdict?

JUROR: Yes.

THE COURT: Mr. Villena, is that your verdict?

JUROR: Yes.

THE COURT: Mr. Molina, is that verdict?

JUROR: Yes.

THE COURT: Ms. Jones, is that your verdict?

JUROR: Yes.

THE COURT: Ms. Weiss, is that your verdict?

JUROR: Yes.

THE COURT: Ms. Jimenez, is that your verdict?

JUROR: Yes.

THE COURT: Ms. Donner, is that your verdict?

JUROR: Yes.

THE COURT: Ladies and gentlemen, thank you so much. I know this has been a difficult experience for so many reasons. As I told you on the first day, in some ways this is

KARTSYN1

1 a historic event. We have been without jury trials for so long
2 and I know it's not easy to come out of the confinement of your
3 homes to come here in a public place and meet with people you
4 don't know for days on end and then to undertake a task that is
5 really so difficult. I know that it's been complicated, I know
6 that at times it's been tedious, I know that some of you have
7 had to travel a long distance every day. And on behalf of
8 myself and the lawyers and the parties, we all really are so
9 appreciative and want to thank you for your service.

10 So what I would like to do now is you are discharged,
11 but if you would go into the jury room I will come back there
12 and I would like to thank you each personally before you leave.
13 Thank you again.

14 I will mark the verdict form as Court Exhibit 12.

15 (Jury not present)

16 THE COURT: Okay. So I am going to go talk to the
17 jury and thank them personally, shake all their hands. I want
18 to thank counsel. I know it's been just as hard for you all
19 for all the same reasons and more. I know that it's been
20 difficult to get your witnesses here, to get you all here, and
21 I also want to thank you for the quality of lawyering on both
22 sides and for the civilized way that you have treated each
23 other and comported yourselves. It made it a real pleasure to
24 preside over the trial. If you don't mind, I will shake all
25 your hands before I shake the jurors'.

KARTSYN1

1 I can't shake hands, it's Covid. Okay, well, I won't
2 even try to.

3 Thank you, everybody, individually and collectively
4 also. I know the lawyers worked incredibly hard. Also, thanks
5 to your teams who must be in your offices toiling away. I know
6 how this works, and I know that they have spent a lot of late
7 nights, so please give them my thanks.

8 MR. DE VRIES: Thank you very much, your Honor.

9 MR. GROOMBRIDGE: Thank you, your Honor.

10 (Trial concluded)